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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)**

Davison Design & Development Inc., a
Pennsylvania corporation, XL Marketing Corp.,
a Delaware corporation, Spire Vision Holdings,
Inc., a Delaware corporation, ProAdvertisers,
LLC, a Delaware Limited Liability Company,
Prime Advertisers, LLC, and MediActivate,
LLC, Nevada Limited Liability Companies, and
ConnectionCentrals, a Delaware Series Limited
Liability Company,

Plaintiffs,

v.

Catherine Riley, an individual,
Defendant.

No. 3:11-cv-02970 (EDL)

**~~PROPOSED~~
STIPULATION AND ORDER
CONSOLIDATING CASE NO.
3:11-cv-02970 (EDL) WITH
CASE NO. 3:11-cv-05107 (MEJ)
AS MODIFIED**

CATHY RILEY, an individual,

Counter-Claimant,

vs.

SPIRE VISION HOLDINGS INC., a
Delaware corporation, *et al*,

Counter-Defendants.

I. RELIEF REQUESTED

The Parties who have appeared in this matter and who have not been dismissed, and the Parties in *XL Marketing Corp. et al. v. Kristina Kirby*, No. 3:11-cv-05107 (MEJ), jointly request that the cases be consolidated. Each case involves similar claims, law, and facts.

II. STIPULATION

1. Plaintiffs Davison Design & Development, Inc. et al., (“Davison”) and the Spire Vision Plaintiffs are business entities who received letters from Defendant “Catherine” (actually, “Cathy”) Riley (“Riley”) demanding damages based on receiving allegedly unlawful emails.
2. The Plaintiffs in case no. 3:11-cv-05107 (MEJ) (XL Marketing Corp. *et al*, also Spire Vision entities), are business entities who received letters from Defendant Kristina Kirby (“Kirby”) demanding damages based on receiving allegedly unlawful emails.
3. Davison and the Spire Vision Plaintiffs filed suit against Riley seeking declaratory relief in case no. 3:11-cv-02970 (EDL).
4. XL Marketing Corp. and the other Spire Vision Plaintiffs filed suit against Kirby seeking declaratory relief and damages in case no. 3:11-cv-05107 (MEJ).
5. Counsel for Riley and Kirby are the same.
6. Counsel for XL Marketing (and the other Spire Vision Plaintiffs) and Davison are the same.

- 1 7. The cases present the same or similar legal issues and are based on
2 similar facts.
- 3 8. On December 12, 2011, Riley and Kirby filed joint counter-claims in
4 this Action, which were replaced by Riley's First Amended Counter-
Claims in this Action.
- 5 9. Riley and Kirby stipulate that, if the cases are consolidated, they will
6 not move to remand to State court.
- 7 10. The Parties stipulate that, if the cases are consolidated, Kirby has been
8 properly served as of the date of consolidation.
- 9 11. The Parties stipulate that, if the cases are consolidated, all defaults as
10 to these Parties are set aside.
- 11 12. If the cases are consolidated, Riley will have leave to amend her First
12 Amended Counter-claims (Docket #27) in order to file her [Proposed]
13 Second Amended Counter-claims, attached as Exhibit "A," which she
14 will promptly do as soon as this Order is signed. Counter-Defendants
15 will respond within twenty (20) days of filing.
- 16 13. Counsel for Plaintiffs stipulates that, if the cases are consolidated,
17 Plaintiffs in the Kirby action will promptly file a First Amended
18 Complaint, removing the first cause of action (declaratory relief as to
19 the CAN-SPAM Act) and the third cause of action (tortious
20 interference).
- 21 14. If the cases are consolidated, Kirby will withdraw her Rule 12 Motion,
22 currently set for hearing on March 9, 2012. Kirby and Riley stipulate
23 that they will not move for dismissal based on Fed.R.Civ.P.12(b)(1-5,
24 7), nor in any other way challenge jurisdiction, venue, or service of
25 process, but may move to dismiss on any other basis. Plaintiffs
26 understand and agree that Kirby may refile a Rule 12 Motion, but she
27 will not move for dismissal based on FRCP 12(b)(1), (2), (3), (4), (5),
28 or (7). Kirby may move to dismiss or challenge the First Amended
Complaint on any other basis.
15. Counsel for Plaintiffs stipulates that, if the cases are consolidated,
other Spire Vision entities – Caivis Acquisition Corp. II, Caivis
Acquisition Corp. III, Spire Vision LLC, SilverInteractive, Digital
Publishing Corp., Ward Media Inc., and *OnDemandResearch.com* –
have been properly served as of the date that Riley files Second
Amended Counter-Claims and Kirby files Counter-Claims.
16. The parties stipulate that the case schedule in case no. 3:11-cv-02970
(EDL) shall apply to the consolidated matter, except that expert

witness disclosures are due May 15, 2012.

17. Judicial economy and the Parties' interests are served by consolidation of the cases.

PURSUANT TO STIPULATION, IT IS SO ORDERED. IT IS FURTHER ORDERED that Case No. 11-5107 EMC is related to, and after reassignment will be consolidated with, No. 11- 2970 EDL, which is the lead case on the consolidated docket; the parties in the 11-5107 action must file a consent or declination to appear before a United States Magistrate Judge by March 15, 2012; the parties shall file a notice of withdrawal of pending motions and a joint request to set aside entry of default pursuant to this Order on stipulation; and Counterclaimant Riley is granted leave to file her Second Amended Counterclaims in the 11-2970 action and Plaintiffs are granted leave to file a First Amended Complaint in the 11-5107 action. The parties must file the appropriate pleadings on the docket.

Dated: March 8, 2012

SUBMITTED and STIPULATED this 6th day of March, 2012.

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